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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 181

WELLS LAMONT CORPORATION, A CORPORATION,
Petitioner,

vs.

CHESTER BOWLES, PRICE ADMINISTRATOR, AND
JAMES G. ROGERS, ACTING ADMINISTRATOR,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS.

PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI TO UNITED STATES EMERGENCY COURT OF APPEALS.

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Petitioner requests reconsideration of its petition for a writ of certiorari to the United States Emergency Court of Appeals, which this Court denied on October 8, 1945.

This Court is most earnestly urged to examine carefully the brief statement, given below, of petitioner's reasons for reconsideration. We sincerely believe that these rea-

sons demonstrate that it was impossible, as a matter of law, for the lower court to have been correct in reaching the conclusions upon which it based its dismissal of petitioner's complaint.

Petitioner's complaint was dismissed on two grounds:

First. The practice of "in-line" pricing in the glove industry falls outside the scope of Section 2 (h) of the Emergency Price Control Act of 1942.[1]

Second. The use of the practice in establishing ceiling prices for gloves during March, 1942, would lead to circumvention and evasion of the Price Administrator's regulation.

The first ground was based solely upon the court's conclusion that there was a lack of consistency and uniformity in the application of the practice. But the court based this conclusion upon facts found which, *on their face*, had no possible bearing upon the question of consistency or uniformity of application of the practice.

The second ground was based by the court upon a finding which was made by the respondent Price Administrator in his opinion accompanying the denial of petitioner's protest (R. 60-61). For the respondent to have been correct in that finding, however, is a mathematical impossibility.[2]

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[1] So far as relevant, Section 2(h) of the Emergency Price Control Act of 1942 (U. S. C. A., Title 50, App. Sec. 902 (h)) reads:

"The powers granted in this section shall not be used or made to operate to compel changes in the business practices, cost practices or methods, or means or aids to distribution established in any industry, * * * except * * * to prevent circumvention or evasion of any regulation, * * * or requirement under this Act."

[2] No mention of the "finding" was made by the court in its original opinion. There has never been any explanation by the Price Administrator as to why circumvention or evasion would result; nor is there any discussion at all by the court either in its original or amended opinion on the question. On the other hand, the contentions of petitioner in regard to it have never, throughout this case, been answered by anyone.

Attached to this petition is a Chart reproduced as it appeared at the end of petitioner's reply brief filed with this Court. This Chart was made up from evidence in this case for the purpose of showing graphically—and in further confirmation of petitioner's sworn statements—the results of the application of "in-line" pricing methods. The Chart is a breakdown of the selling prices for styles within a single class of leather palm gloves, fixed under "in-line" pricing methods and published in petitioner's December 1, 1941, price list.

The Chart confirms graphically the fact that "in-line" pricing embraces in its application two basic and unvarying principles:

First, it operates with respect to a single price list only;

Second, the cent-amount of each differential representing a particular construction feature is applied uniformly and unvaryingly across the selling prices of each class of gloves on that single list.

The court's conclusion of lack of consistency and uniformity in the application of the practice was based upon its finding that price differences between the selling prices of glove styles appearing "* * * in the December, 1941, price list varied from those in the March, 1942, list in many particulars" (R., 139). But the fact that price differences between the selling prices of glove styles in *one* list vary from those in *another* list can have no possible bearing on the question of consistency or uniformity of application. The practice still may operate, and does operate, consistently and uniformly across the selling prices on *each* separate price list.

Accordingly, the lower court's conclusion is, *on its face*, unsupported by its own findings of fact.

We have stated that the use of "in-line" pricing cannot

possibly lead to circumvention or evasion of the Price Administrator's regulation. This is clearly demonstrated by the Chart. In order to determine the correctness of any March ceiling price, the Price Administrator needs only to do two things: first, to identify the glove style delivered during March; and, second, to add to or substract from its delivered price the cent-amount of the differential applicable, in the March list, to each added or omitted construction feature of the glove on which the "in-line" ceiling price is sought.

Accordingly, a determination of the correctness of any of petitioner's March prices involves the use of simple arithmetic—nothing more; and circumvention or evasion is *mathematically impossible.*

Concluding Statement.

It is submitted that a refusal by this Court to reconsider and grant petitioner a writ of certiorari will result in a gross injustice. It will deny petitioner a review of a determination by the lower court which is patently unsupported by the court's own findings. It will uphold a completely naked finding of the Price Administrator, and will deny petitioner protection against sheer administrative absolutism.

The position taken by petitioner in this case had the support of respondent Price Administrator's own officials, upon whose interpretation of the provisions of the regulation and of the Act this petitioner relied in good faith. That interpretation was later disclaimed by the Price Administrator on the ground that it was not binding upon him. As a result, petitioner and other manufacturers in the glove industry have pending against them suits for treble damages, brought by the Price Administrator, which may result in judgments against them totalling many hundreds of thousands of dollars.

Consequently, the issuance of a writ of certiorari to review this case is essential in the interests of simple justice, as well as for the protection of the legal rights of petitioner and others in the glove industry.

Respectfully submitted,

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Example Concerning Decemb

BREAKDOWN OF SELLING PRICES FIXE
For Styles Within Single Class o

Common Characteristics of the Class:
LEATHER PALM AND FLANNEL BACK,
with leather tipped fingers

LEATHER PALM AND FLANNEL BACK (tipped fingers)		Style No.	#33	#285	#3102	#3132	#3162	#3130	#38	#3296	#3160	#388P	#39	#389P	
2nd Grade Shoulder Split Leather...	Am't Charged Dec. 1, 1941 (per dozen) $3.50		$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	

DIFFERENTIALS

Description of Material & Construction Features.	Cent Am't (per doz. pr.)													
ALTERNATE LEATHERS:														
2nd Grade Shoulder Split	$ .00	.00	—	—	—	—	—	—	—	—	—	—	—	
1st Grade Shoulder Split	.40	—	.40	.40	.40	.40	.40	—	—	.40	—	—	—	
Side Split	1.15	—	—	—	—	—	—	1.15	1.15	—	—	1.15	—	
Cream Grain Leather, Hob Nob	1.90	—	—	—	—	—	—	—	—	—	1.90	—	1.90	
Grain Leather (Buck tan), with full thumb	2.15	—	—	—	—	—	—	—	—	—	—	—	—	
ALTERNATE CUFFS:														
Slip-on (no cuff), elastic back	.10	—	—	—	—	—	—	—	.10	—	—	—	—	
Knit-wrist	.35	.35	.35	.35	—	—	—	.35	—	—	.35	—	—	
Safety Cuff (narrow band), elastic back	.85	—	—	—	.85	—	.85	—	—	—	—	—	.85	
Safety Cuff (wide band), elastic back	1.10	—	—	—	—	—	—	—	—	—	—	—	—	
Gauntlet Styles:														
Waterproof Cufflex, elastic back	1.10	—	—	—	—	1.10	—	—	—	1.10	—	—	—	
Two-piece Waterproof Cufflex, elastic back	1.35	—	—	—	—	—	—	—	—	—	—	—	—	
ADDITIONAL FEATURES:														
Knuckle Strap (split)	.25	—	—	—	—	—	.25	—	—	.25	—	—	—	
Grain Leather Knuckle Strap	.50	—	—	—	—	—	—	—	—	—	—	—	—	
Continuous Heel	.25	—	—	—	—	—	.25	—	—	.25	—	.25	—	
Thumb Strap	.25	—	—	—	—	—	—	—	—	—	—	—	—	
Full Leather Thumb (split)	.25	—	—	—	—	—	—	—	.25	—	—	—	—	
Full Leather First Finger	.25	—	—	—	—	—	—	.25	.25	—	—	—	—	
¾ Leather Back	.75	—	—	—	—	—	—	—	—	—	—	—	—	
Lumber-Jack Pattern, knit wrist	1.35	—	—	—	—	—	—	—	—	—	—	1.35	—	
E-Z Back Pattern	1.00	—	—	—	—	—	—	—	—	—	—	—	—	
Fleece Lining and Roll Binding	1.35	—	—	—	—	—	—	—	—	—	—	—	—	
TOTALS (per dozen pair)		$3.85	$4	$4.25	$4.25	$4.75	$5.00	$5.25	$5.25	$5.25	$5.50	$5.75	$6.25	$6.25	$
Dec. 1, 1941 Published Selling Prices (per dozen pair) (Record, pp. 23-25)		$3.85	$4	$4.25	$4.25	$4.75	$5.00	$5.25	$5.25	$5.25	$5.50	$5.75	$6.25	$6.25	$
Catalog Page (Record, p. 38)		19		18	16	16	16	16	16	18	16	20	17	20	

CHART

Concerning December 1, 1941 Published Prices

ING PRICES FIXED UNDER "IN-LINE" PRICING METHODIODS
Within Single Class of Leather Palm Glove Group

#388P	#39	#389P	#420	#3492	#236	#239	#390P	#419	#944P	#3398	3398	#24	#224	#235	#327	#29	#229	#326	#928P	#946P	#790	#3432	#84
$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.
—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
—	1.15	—	1.15	1.15	1.15	1.15	—	1.15	—	1.15	1.15	1.15	1.15	1.15	1.15	1.15	1.15	1.15	—	—	1.15	1.15	—
1.90	—	1.90	—	—	—	—	1.90	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—	—	2.15	—	—	—	—	—	—	—	—	—	2.15	2.15	—	—	2.
—	—	—	—	.10	—	—	—	—	—	.10	.10	—	—	—	—	—	—	—	—	—	—	—	—
.35	—	—	—	—	—	—	—	—	.35	—	—	—	—	—	—	—	—	—	—	—	—	—	—
—	—	.85	.85	—	—	—	—	—	—	—	—	—	—	—	.85	—	—	—	.85	—	—	—	—
—	—	—	—	—	1.10	—	—	—	—	—	—	1.10	1.10	—	—	—	—	—	—	—	1.10	1.10	1.
—	—	—	—	—	—	—	1.10	1.10	—	—	—	—	—	—	—	—	—	1.10	—	1.10	—	—	—
—	—	—	—	—	—	—	—	—	—	—	—	—	—	1.35	—	1.35	1.35	—	—	—	—	—	—
—	—	—	.25	.25	.25	—	—	.25	—	.25	.25	.25	.25	.25	—	.25	.25	—	—	—	.25	.25	—
—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
—	.25	—	.25	—	.25	.25	—	.25	.25	.25	.25	.25	.25	.25	.25	.25	.25	.25	.25	.25	.25	.25	—
—	—	—	—	—	—	.25	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
—	—	—	.25	.25	.25	—	—	.25	—	—	—	.25	.25	.25	.25	.25	.25	.25	—	—	.25	.25	—
—	—	—	—	—	—	—	—	—	.25	—	—	.25	.25	—	—	.25	.25	—	.25	.25	—	—	—
—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	.75	—	—	.75	—	—	—	—	—
—	1.35	—	—	—	—	1.35	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
—	—	—	—	1.00	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	1.00	1.00	—
—	—	—	—	—	—	—	—	—	—	1.35	.35	—	—	—	—	—	—	—	—	—	—	—	—
$5.75	$6.25	$6.25	$6.25	$6.25	$6.50	$6.50	$6.50	$6.50	$6.50	$6.60	$.60	$6.75	$6.75	$6.75	$6.75	$7.00	$7.00	$7.00	$7.00	$7.25	$7.50	$7.50	$7.7
$5.75	$6.25	$6.25	$6.25	$6.25	$6.50	$6.50	$6.50	$6.50	$6.50	$6.60	$.60	$6.75	$6.75	$6.75	$6.75	$7.00	$7.00	$7.00	$7.00	$7.25	$7.50	$7.50	$7.7
20	17	20	17	18	17	17	20	17	20	18	18	17	17	17	17	17	17	17	20	21	18	19	2

327	#29	#229	#326	#928P	#946P	#790	#3432	#840P	#789	#3462	#849P
.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50
—	—	—	—	—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—	—	—	—	—
.15	1.15	1.15	1.15	—	—	1.15	1.15	—	1.15	1.15	—
—	—	—	—	—	—	—	—	—	—	—	—
—	—	—	—	2.15	2.15	—	—	2.15	—	—	2.15
—	—	—	—	—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—	—	—	—	—
.85	—	—	—	.85	—	—	—	—	—	—	—
—	—	—	—	—	—	1.10	1.10	1.10	—	—	—
—	—	—	1.10	—	1.10	—	—	—	—	—	—
—	1.35	1.35	—	—	—	—	—	—	1.35	1.35	1.35
—	.25	.25	—	—	—	.25	.25	—	.25	.25	—
—	—	—	—	—	—	—	—	.50	—	—	.50
.25	.25	.25	.25	.25	.25	.25	.25	.25	.25	.25	.25
—	—	—	—	—	—	—	—	—	—	—	—
.25	.25	.25	.25	—	—	.25	.25	—	.25	.25	—
—	.25	.25	—	.25	.25	—	—	.25	—	—	.25
.75	—	—	.75	—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—	—	—	—	—
—	—	—	—	—	—	1.00	1.00	—	1.00	1.00	—
—	—	—	—	—	—	—	—	—	—	—	—
.75	$7.00	$7.00	$7.00	$7.00	$7.25	$7.50	$7.50	$7.75	$7.75	$7.75	$8.00
.75	$7.00	$7.00	$7.00	$7.00	$7.25	$7.50	$7.50	$7.75	$7.75	$7.75	$8.00
17	17	17	17	20	21	18	19	20	18	19	20